No. 00-761

In the Supreme Court of the United States

INDIANAPOLIS BAPTIST TEMPLE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the provisions of the Internal Revenue Code that require petitioner (i) to pay generally applicable taxes to fund social security and medicare and (ii) to withhold social security, medicare, and income taxes from the wages of its employees violate the religion clauses of the First Amendment.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-11) is reported at 224 F.3d 627. The opinions of the district court (Pet. App. 15-36) are reported at 61 F.Supp.2d 831 and 61 F.Supp.2d 836.

JURISDICTION

The judgment of the court of appeals was entered on August 14, 2000. The petition for a writ of certiorari was filed on November 13, 2000 (a Monday). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioner describes itself as a New Testament Church. Petitioner was founded in 1950 and operated as a not-for-profit corporation until 1983, when it became an unincorporated religious society. Pet. App. 2, 16. In 1986, petitioner renounced its status as an unincorporated religious society. *Id.* at 2. Petitioner states that its central tenet is the absolute sovereignty of the New Testament Church under the Lordship of Jesus Christ as the head of the Church and that its doctrine requires the complete separation of the Church from the State (Pet. 9, 14).

2. The Internal Revenue Code imposes various obligations on employers. To fund social security and medicare programs, 26 U.S.C. 3111 imposes an excise tax on employers equal to a percentage of the wages paid to employees. 26 U.S.C. 3111(a), (b). In addition, employers are required to withhold from the wages of their employees the social security and medicare taxes imposed directly on employees by 26 U.S.C. 3101(a) and (b). See 26 U.S.C. 3102(a). Employers are similarly required to withhold amounts representing the normal income tax imposed by 26 U.S.C. 1 from the wages of employees. See 26 U.S.C. 3402. [1] Employers are required to pay over to the United States the amount of taxes thus withheld. 26 U.S.C. 3102(b), 3403.

Petitioner did not file federal employment returns for any quarter during the years 1987 through 1993 and did not pay any federal employment taxes for those quarters. Pet. App. 2. When, after notice from the Internal Revenue Service, petitioner continued to fail

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[1] Pursuant to 26 U.S.C. 3301, employers generally are also liable for a tax that funds a federal-state unemployment compensation program. Such taxes are not at issue in this case.

to file returns, the Service prepared returns for petitioner pursuant to 26 U.S.C. 6020(b). These returns were then sent to petitioner so that petitioner could check the accuracy of the amounts stated on the returns. Pet. App. 2-3. After petitioner did not submit any corrections within the time requested, the Service assessed tax, interest, and additions to tax totaling $3,498,355.62 and sent notice and demand for payment to petitioner. *Id.* at 3.

3 After petitioner refused to pay the amounts assessed, the government commenced this action to reduce the assessments to judgment and to foreclose on two parcels of real estate owned by petitioner. Pet. App. 3. The parties filed cross motions for summary judgment. Petitioner did not dispute the accuracy of the tax assessment figures. *Id.* at 24. Instead, petitioner argued that it was not liable for these taxes on the theory that (i) the religion clauses of the First Amendment of the Constitution barred any application of the federal tax laws to petitioner and (ii) the taxes had not in fact been assessed against it. *Ibid.*

a. In an order dated January 19, 1999, the district court denied petitioner's motion for summary judgment to the extent that it was based on First Amendment grounds. The district court reasoned that "the United States Supreme Court does not share [petitoner's] creative interpretations of the First Amendment, making resolution of this issue rather straightforward." Pet. App. 28-29 (footnote omitted). The court noted that this Court's decision in *United States* v. *Lee*, 455 U.S. 252 (1982), disposed of petitioner's argument under the Free Exercise Clause of the First Amendment. [2] Pet.

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[2] The court also noted that in *Employment Division, Department of Human Resources* v. *Smith*, 494 U.S. 872 (1990), the Court

App. 29-31. The court stated that, "at least with respect to the payment of income taxes and social security taxes, the [Supreme] Court has determined that the balance between the private interest in religious freedom and the government interest in tax collection and maintenance of a functioning tax system must be struck in favor of the governmental interest." *Id.* at 30. The court rejected petitioner's attempt to distinguish this established case law on the basis that it was a "New Testament Church." The court stated that there was "no reason not to apply the clear principles set forth by the Supreme Court to [petitioner] simply because it designates itself as a New Testament Church." *Id.* at 30 n.6.

The district court also rejected petitioner's arguments under the Establishment Clause of the First Amendment. Citing *Lemon* v. *Kurtzman*, 403 U.S. 602, 6126-13 (1971), the court first observed that, "[t]o pass muster under the Establishment Clause, the tax system must have a secular legislative purpose, its primary purpose must neither advance nor inhibit religion, and it must not foster an excessive entanglement with religion." Pet. App. 31. The court noted that, because the Court in *Jimmy Swaggart Ministries* v. *Board of Equalization*, 493 U.S. 378, 394 (1990), had held that "it is undeniable that a generally applicable tax has a secular purpose and neither advances nor inhibits

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announced that a less stringent standard than that employed in *Lee* should be applied and that, under that standard, the government's case was even stronger. The court noted, however, that, under the Religious Freedom Restoration Act, 42 U.S.C. 2000bb-1 *et seq.*, which was passed in 1994, both federal and state laws must comply with the tests described in *Lee*. Pet. App. 31 n.7. As to State laws, see *City of Boerne* v. *Flores*, 521 U.S. 507 (1997).

religion," the first two requirements of this test are satisfied here. Pet. App. 31.

The court concluded that another of this Court's holdings in *Jimmy Swaggart Ministries* guided the resolution of the remaining issue. The Court held in that case that "generally applicable administrative and record keeping regulations may be imposed on religious organizations without running afoul of the Establishment Clause." Pet. App. 31-32 (quoting 493 U.S. at 395). The district court concluded that "carving out an exception to account for conflicting religious beliefs would result in the very entanglement that [petitioner] seeks to prevent, since it would necessarily require the IRS to examine the sincerity of a person's religious beliefs." *Id.* at 32. The court also concluded that a decision of the Third Circuit, *Bethel Baptist Church* v. *United States*, 822 F.2d 1334 (1987), cert. denied, 485 U.S. 459 (1988), supports its holding in this case. Pet. App. 32.

b. In an order dated June 29, 1999, the district court rejected petitioner's argument that the tax assessments involved in this case were not made against it. The court stated that "[t]he record clearly establishes that * * * the assessment at issue was against [petitioner] * * *." Pet. App. 20. Having rejected both of petitioner's contentions, the court granted summary judgment to the government. *Id.* at 22.

4. The court of appeals affirmed. Pet. App. 1-11. Petitioner did not renew on appeal its contention that tax assessments had not been made against it. Instead, petitioner relied solely on its assertion that the religion clauses of the First Amendment prevent the government from assessing taxes against it. *Id.* at 3. The court of appeals held that petitioner's "challenges to the

application of the federal employment tax laws to it are without merit." *Id.* at 11.

In rejecting petitioner's argument based on the Free Exercise Clause, the court of appeals held that "neutral laws of general application that burden religious practices do not run afoul of the Free Exercise Clause" (Pet. App. 4) and that petitioner did "not (and, in any event, could not) contest the government's characterization of the federal employment tax laws as neutral laws of general application" (*id.* at 5).

The court next concluded that petitioner's arguments based on the Religious Freedom Restoration Act (RFRA), 42 U.S.C. 2000bb-1 *et seq.*, were unavailing. Pet. App. 5-6. The court explained that "[i]n several pre-*Smith* Free Exercise challenges to the application of federal tax laws, the Supreme Court and various courts of appeals concluded both that maintaining a sound and efficient tax system is a compelling government interest and that the difficulties inherent in administering a tax system riddled with judicial exceptions for religious employers make a uniformly applicable tax system the least restrictive means of furthering that interest." *Id.* at 6.[3] The court observed that "[t]he cases that have been decided under RFRA reach the same conclusion." *Ibid.*[4] The court stated that "[w]e

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[3] On this issue, the court of appeals cited *Hernandez* v. *Commissioner*, 490 U.S. 680, 698-700 (1989); *United States* v. *Lee*, 455 U.S. 252, 258-260 (1982); *South Ridge Baptist Church* v. *Industrial Comm'n*, 911 F.2d 1203, 1206-1210 (6th Cir. 1990), cert. denied, 498 U.S. 1047 (1991); and *Bethel Baptist Church* v. *United States*, 822 F.2d at 1338-1339.

[4] The RFRA cases cited by the court were *Browne* v. *United States*, 176 F.3d 25, 26 (2d Cir. 1999), cert. denied, 120 S. Ct. 934 (2000); *Adams* v. *Commissioner*, 170 F.3d 173, 175-180 (3d Cir. 1999), cert. denied, 120 S. Ct. 95 (2000); and *Droz* v. *Commissioner*,

find this authority persuasive and see no reason to reach a different conclusion." *Id.* at 7. The court of appeals also concluded that there was no basis for petitioner's claim that these decisions should be distinguished on the ground that they involved "a state-recognized legal entity, whereas [petitioner] is simply a 'New Testament Church.'" *Ibid.*

The court of appeals then rejected petitioner's arguments based upon the Establishment Clause and explained that petitioner has erred in relying on *Walz* v. *Tax Commission*, 397 U.S. 664 (1970) (Pet. App. 8-9):

> While taxing religious organizations involves greater government entanglement than not taxing them does, this greater entanglement is not necessarily unconstitutionally excessive. In fact, the Supreme Court has held that the sorts of generally applicable administrative and record keeping requirements imposed by tax laws may be imposed on religious organizations without violating the Establishment Clause. See *Jimmy Swaggart Ministries*, 493 U.S. at 394-97 (state sales and use tax); *Hernandez*, 490 U.S. at 695-98 (federal income tax); see also *South Ridge Baptist Church*, 911 F.2d at 1210 (workers' compensation program); *Bethel Baptist Church*, 822 F.2d at 1340-41 (social security tax). The normal incidents of collecting federal employment taxes simply do not involve the intrusive government participation in, supervision of, or inquiry into religious affairs that is necessary to find excessive entanglement. See *Jimmy Swaggart Ministries*, 493 U.S. at 394-96; *Hernandez*, 490 U.S. at 696-98. Even the somewhat more intrusive tax

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48 F.3d 1120, 1122-1125 (9th Cir. 1995), cert. denied, 516 U.S. 1042 (1996).

> foreclosure ordered in this case is a discrete event involving no inquiry into religious matters and, as such, raises no excessive entanglement concerns. Accordingly, there is no merit to [petitioner's] Establishment Clause challenge to the federal employment tax laws.

Finally, the court rejected petitioner's assertion that its claims were supported by "general principles behind the religion clauses of the First Amendment." Pet. App. 9. The court concluded that petitioner erred in relying on *Rector of the Holy Trinity Church* v. *United States*, 143 U.S. 457 (1892), because "[t]he case had nothing to do with the constitutionality of general regulatory laws, and there is no question in this case regarding the intended scope of the federal employment tax laws." Pet. App. 10. The court similarly rejected petitioner's reliance on *Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints* v. *Amos*, 483 U.S. 327 (1987). The court explained that (Pet. App. 10a):

> the fact that the Establishment Clause allows exceptions for religious entities does not mean that such exceptions are required. Put simply, applying neutral, generally applicable, minimally intrusive tax laws to religious entities does not unconstitutionally abridge the religious liberty guaranteed by the First Amendment.

The court disagreed with petitioner's assertion that, in noting that petitioner was an unincorporated religious society, the decision of the district court established a state church. Pet. App. 10-11. The court explained that the district court "simply described the legal (not religious) nature of an already existing church." *Id.* at 10. The court added that: "In any event,

it does not matter what sort of entity [petitioner] is. Whatever it is, it must comply with the federal employment tax laws." *Id.* at 10-11.

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or any other court of appeals. Further review is therefore not warranted.

1. The court of appeals correctly held that the application of generally applicable employment tax provisions to petitioner does not violate the religion clauses of the First Amendment. Prior to *Employment Division, Department. of Human Resources of Oregon* v. *Smith*, 494 U.S. 872 (1990), this Court had applied a "compelling interest test" in evaluating Free Exercise claims. In clarifying those decisions in *Smith*, however, the Court concluded that a less stringent standard should be applied. *Id.* at 883-890. In response to *Smith*, Congress enacted RFRA, Pub. L. No. 103-141, 107 Stat. 1488 (codified at 42 U.S.C. 2000bb-1 *et seq.*), which generally reinstates the "compelling interest test" of the pre-*Smith* case law as the standard for evaluating legislation that imposes a substantial burden on the Free Exercise of religion. Pre-*Smith* decisions, such as *Hernandez* v. *Commissioner*, 490 U.S. 680, 699-700 (1989), and *United States* v. *Lee*, 455 U.S. 252, 257-258 (1982), make clear that the employment taxes involved in this case pass muster under the compelling interest test. These cases explain that a substantial burden on the free exercise of religion is "justified by the 'broad public interest in maintaining a sound tax system,' free of 'myriad exceptions flowing from a wide variety of religious beliefs'" (*Hernandez*, 490 U.S. at 699-700 (quoting *Lee*, 455 U.S. at 260)) and hold that "[b]ecause

the broad public interest in maintaining a sound tax system is of such a high order, religious belief in conflict with the payment of taxes affords no basis for resisting the tax" (*Lee*, 455 U.S. at 260). The taxes involved in this case thus satisfy both the constitutional requirements of the Free Exercise Clause and the statutory standards established in RFRA.

These taxes also satisfy the three requirements stated in *Lemon* v. *Kurtzman*, 403 U.S. 602 (1971), and therefore do not violate the Establishment Clause. In *Jimmy Swaggart Ministries* v. *Board of Equalization*, 493 U.S. at 394, the Court concluded that generally applicable taxes (such as those involved in this case) satisfy the first two requirements of *Lemon* because such taxes have a secular legislative purpose and their principal or primary effect neither advances nor inhibits religion. The third requirement of *Lemon*—that "the statute must not foster 'an excessive government entanglement with religion'" (403 U.S. at 613)—is also satisfied by neutral tax laws that are applicable to employers generally. The courts below thus correctly concluded (Pet. App. 11, 29) that the challenged taxes must be upheld under a straightforward application of well-established First Amendment principles.

Petitioner errs in asserting that these well-established principles have no application to a church that has as its central tenet "the absolute sovereignty of the Church under the Lordship of Jesus Christ as the head of the Church" and that adheres to a doctrine that "requires the complete separation of the Church from the state." Pet. 14. This Court has explained that its "holdings do not call for total separation between church and state" and that "[s]ome relationship between government and religious organizations is inevitable." *Lemon* v. *Kurtzman*, 403 U.S. at 614. The

Establishment Clause does not provide a special exemption for one form of church, rather than another, from neutral tax laws of general application.

Furthermore, as the court of appeals pointed out, although "[t]he Free Exercise Clause absolutely protects the freedom to believe and profess whatever religious doctrine one desires," it does not provide "absolute * * * protection for the ability to practice (through the performance or non-performance of certain actions) one's religion." Pet. App. 4. The court of appeals correctly held that the governing constitutional principle in this case is that "neutral laws of general application that burden religious practices do not run afoul of the Free Exercise Clause." *Ibid.*

2. Petitioner errs in contending (Pet. 18) that the decision in this case conflicts with *Murdock* v. *Pennsylvania*, 319 U.S. 105 (1943). In *Murdock*, the Court held unconstitutional a municipal ordinance "which as construed and applied require[d] religious colporteurs to pay a license tax as a condition to the pursuit of their activities." *Id.* at 110. The present case involves a tax on incomes, not a license tax that restricts one's right to follow a chosen profession. Noting that distinction in *Jimmy Swaggart Ministries*, 493 U.S. at 389, this Court expressly limited the scope of *Murdock*, holding that it "appl[ies] only where a flat license tax operates as a prior restraint on the free exercise of religious beliefs." See also *id.* at 390 (noting that, under *Murdock*, "a generally applicable income or property tax * * * may constitutionally be imposed on religious activity").

Petitioner similarly errs in asserting (Pet. 19) that there is a conflict between the decision in this case and *Rector of the Holy Trinity Church* v. *United States*, *supra*. The *Holy Trinity* case involved a question of statutory interpretation—whether a statute that

produces an absurd result if interpreted literally should be given a non-literal interpretation that actually effectuates the intent of Congress. 143 U.S. at 465-472. As the court of appeals succinctly stated, that "case had nothing to do with the constitutionality of general regulatory laws." Pet. App. 10.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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